

REVISED MARCH 2003

STANDING PANEL OF BANKRUPTCY TRUSTEES SOUTHERN DISTRICT OF CALIFORNIA STANDING ADMINISTRATION GUIDELINES

I

Debtor's Representation and Attendance at Meeting of Creditors

Debtors must attend the initial Meeting of Creditors and, unless excused by the Trustee, any continued Meeting of Creditors. Panel Trustees do not have the authority to excuse the debtor from attending his or her initial Meeting of Creditors.

At the §341(a) meeting each individual debtor must present original government issued photo identification and confirmation of the social security number. Any document used must be an original except that a copy of a W-2 Form, an IRS Form 1099, or a recent payroll stub may be accepted to confirm debtor's social security number. Acceptable forms of picture identification (ID) include; driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority (if authorized by the United States Trustee). Acceptable forms of proof of social security number include: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.

Attorneys representing debtors at the Meeting of Creditors must have the debtors file and backup documents and be familiar with the case to assist the debtors in responding to questions of the Trustee and/or creditors.

Debtor's attorney or the debtor in pro per must independently contact the United States Trustee for consideration of alternative procedures, i.e., telephonic, etc. Debtor's attorney must be physically present at the time of the alternative procedure for appearance for conducting the Creditors Meeting, with a completed Questionnaire authenticated and executed by the debtor.

II

Supporting Documentation

Certain supporting documentation is required in each case to allow the Trustee to fulfill his or her fiduciary duty and due diligence in investigating the financial affairs of the debtor pursuant to 11 USC 704. Specifically, in each case, where applicable, the debtor and/or the debtor's attorney must provide in addition to debtor's Schedules and Statements filed with the Court:

1. **Proof of Income:** Written documentation supporting income earnings of the debtor and debtor's spouse (even if non-filing spouse) as set forth in Schedule I. In this regard it is necessary that the period of time involved be annotated on the documentation. If debtor is self-employed a Profit and Loss (P & L) Statement must be prepared for the three (3) month period preceding case filing, with bank statements attached to support the information in the P & L.

2. Value of Vehicles: Written documentation as to the basis for valuation of motor vehicles. In this regard a Statement of Value can be easily obtained via the Internet at www.kbb.com or www.nadaguides.com and is the preferred form of valuation. The latter site will provide information on recreation vehicles, boats and mobile homes.

3. Value of Real Property: Written documentation as to the basis for valuation of real property. In this regard a Statement from a real property professional, i.e., agent or broker, or written declaration of the debtor confirming such a professional's opinion is acceptable. Debtors and debtor's attorneys are directed to the Internet where it is sometimes possible to obtain comparable sales as to San Diego County properties by going to the County of San Diego web site (www.co.san-diego.ca.us), clicking on "online services", then "search for sales properties" on the debtor's street, etc. entering the street name (not the full address) to discover recent sales.

4. Documentation of Perfected Liens - Vehicles: Copies of vehicle registration, and if encumbered, written proof of payoff balance; additionally copies of vehicle purchase contracts where the vehicle was purchased within 120 days of the filing of the petition;

5. Real Property: Copies of recorded Trust Deeds (not Grant Deeds), or other security instruments, documenting recording where non-institutional lenders are the alleged secured party; copies of documents demonstrating the actual loan advance by the creditor to debtor on Trust Deed/Note transactions; and written proof of pay off balance;

6. Documentation of Perfected Liens - Financing Statements: Copies of filed UCC-1/Security Agreements documenting filing with the Secretary of State; copies of documents demonstrating the actual loan advance by the creditor to debtor on the underlying Promissory Note; and written proof of pay off balance;

7. Trust Documents: Copies of any Trust instrument in which the debtor has an interest of any type, i.e., beneficial or fiduciary;

8. Evidence of Deposit Balances: Copies of bank statements or other bank records, evidencing the balance on deposit as of the bankruptcy filing date. Computations should be demonstrated on the statement if a running balance is not included thereon;

9. Proof of Insurance - Motor Vehicles and Real Property: Copy of proof of insurance, (i.e., declarations page, etc.) documenting extent of coverage and periods of coverage, on motor vehicles and real property; and

10. Proof of Insurance - Business Operations: Copy of proof of insurance for any debtor operating a business including, but not limited to liability, casualty, workers compensation and errors and omissions.

All documents submitted should include a cover page indicating the date and time of the Creditors Meeting. A sample Supporting Documentation Cover Sheet is attached as Exhibit "A." If relevant documents are not provided in time for the Trustee to review such prior to the Creditors Meeting the matter may be continued with debtor, and debtor's counsel of record, required to attend, unless specifically excused by the Trustee.

III

Disclosure of When Debtor Incurred Debt

Schedules D, E & F require the debtor to provide "date claim was incurred." This information is necessary for Trustee to evaluate certain issues pursuant to 18 USC 3057(a) and 11 USC 727.

The required information is not the initial date a credit account was established. The Trustees' interpretation of the term "date claim was incurred" is the period between which the "amounts claimed" were actually incurred. This will require Counsel, or debtors in Pro Per, to adequately perform their research duties under Bankruptcy Rule 9011, to provide the period of time that the current claim was incurred.

IV

Disclosure of Amount of Debt

In addition to a Trustee's obvious duty to liquidate non-exempt assets for the benefit of creditors, Trustees also examine a debtor's ability to participate in a Chapter 13 case pursuant the 11 USC 707(b). It is impossible to compute a Chapter 13 Plan when analyzing an 11 USC 707(b) case when debtor schedules "unknown" for an obligation. It is incumbent upon debtors to estimate all claims so that such an analysis can be conducted. In this analysis, debtors are not to overstate the claims, i.e., a repossession or foreclosure should reflect the deficiency, not the debt before repossession or foreclosure; and the actual pay off, not the eventual payments plus interest. Cases that do not provide such information may be continued so that accurate information is available to the Trustee.

V

Claim of Exemption

CCP 703.140(a)(2) requires a married debtor filing without the spouse to elect the exemptions under CCP 704 et.seq., unless the non-filing spouse executes a written waiver. A sample Waiver form is attached as Exhibit "B." The Waiver is to be filed with the Court. A conformed copy is to be provided to the Trustee.

VI

Questionnaires to be Completed and Delivered at Creditors Meeting

A Questionnaire has been developed for individual debtors (Exhibit C hereto) and Partnership/Corporate debtors (Exhibit D hereto) to address certain inquiries that the Trustees

believe will facilitate the examination of debtors. Debtors must personally execute (fill out) the appropriate Questionnaire and deliver such to the Trustee at the Creditors Meeting. Debtor's attorney is required to execute the completed Questionnaire documenting review of debtor's responses with debtor to demonstrate understanding thereof.

VII

Unincorporated Self-Employed, Professionals, and Business Cases

If a debtor is operating a business or conducting a profession utilizing property of the estate, at the commencement of his or her case, it is necessary for the business to be suspended and the Trustee contacted immediately upon filing. No business or profession utilizing property of the estate is to be conducted absent an Order of the United States Bankruptcy Court.

At a minimum, the Trustee is to be informed in writing within 24 hours of filing of the following:

1. The status and fair market value of all assets of the estate including secured, lessor or exemption claims, that are to be utilized in the business or profession operations;
2. Evidence of current liability insurance coverage in connection with the operation of the business;
3. Evidence of current Workers Compensation insurance in connection with the operation of the business, if applicable;
4. Evidence of current Errors and Omissions insurance coverage, if applicable;
5. Evidence of a reserve tax account to address employee/employer taxes; and
6. The existence of any environmental, law enforcement or federal or state regulatory issues that affect the business or profession.

Business operations utilizing property of the estate are not to be conducted post-petition under any circumstances prior to abandonment, or allowance of exemption of property of the estate utilized in the business or profession without the written concurrence of the Trustee, or Order of the United States Bankruptcy Court.

VIII

Corporate Cases

All business operations are to be terminated on the filing of the case. The Trustee is to be informed immediately of the following:

1. The identity and location of all remaining assets of the debtor corporation;

2. The need for immediate action of the Trustee to preserve assets of the estate; and

3. The existence of any environmental, law enforcement or federal or state regulatory issues that affect the business or profession.

In order for the Trustee to conclude a corporate and/or partnership debtor's 11 USC 341(a) Meeting certain documents may be required for examination:

- 1. Minute Book**
- 2. Shareholder Register**
- 3. Tax returns for past two years**
- 4. Income and Expense and Balance Sheet, Reports for past 1 year**
- 5. Bank Statements and canceled checks for past 1 year**
- 6. Copies of last two inventories, if applicable**
- 7. Documentation of Intellectual property, i.e., patents, trademarks, copyrights, royalties, etc., if applicable; and**
- 8. Accounts Receivable, with all documents associated therewith.**
The above documents should be available for the Trustee if requested
- 9. UCC-1, or other evidence of liens.**

Supporting Documentation Cover Sheet

In Re: _____ Case Number _____ 341(a): _____

Deficiencies:

- ☐ 1. Income Verification (i.e., pay stubs or Profit & Loss Statement)
- ☐ 2. Valuation of motor vehicles
- ☐ 3. Pay off documentation motor vehicles (i.e., balance due)
- ☐ 4. Copies of vehicle registration
- ☐ 5. Copies of vehicle purchase contracts for vehicles purchased within 120 days prior to case filing
- ☐ 6. Proof of insurance on motor vehicles
- ☐ 7. Valuation of real property
- ☐ 8. Pay off Documentation Real Property (i.e., balance due)
- ☐ 9. Copies of recorded Trust Deeds on real property
- ☐ 10. Proof of insurance on real property
- ☐ 11. Loan advances documentation (i.e., evidence of disbursement)
- ☐ 12. Trust instruments
- ☐ 13. UCC-1 (recorded)
- ☐ 14. Bank statements (date of filing)
- ☐ 15. Proof of insurance (business i.e., liability, workers compensation, etc.)
- ☐ 16. CCP 703.140(a) Waiver.

**MUTUAL WAIVER OF RIGHT TO CLAIM STATE EXEMPTIONS, OTHER THAN
THOSE PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION
703.140(b), DURING PENDENCY OF BANKRUPTCY CASE
(California Code of Civil Procedure §703.140(a)(2))**

1. IDENTIFICATION OF PARTIES. This mutual waiver, is made by _____
and _____, husband and wife.

2. PURPOSE OF THIS WAIVER. This waiver is made to satisfy the requirement set forth in California Code of Civil Procedure §703.140(a)(2) regarding the election of exemptions pursuant to §703.140(b) by married debtors who file an individual Bankruptcy petition.

3. LEGAL RIGHTS WAIVED. California Code of Civil Procedure §703.140(a)(2) provides:

IF A PETITION IS FILED INDIVIDUALLY, AND NOT JOINTLY, FOR A HUSBAND OR A WIFE, THE EXEMPTIONS PROVIDED BY THIS CHAPTER OTHER THAN THE PROVISIONS SUBDIVISION (b) ARE APPLICABLE, EXCEPT THAT, IF BOTH HUSBAND AND WIFE EFFECTIVELY WAIVE IN WRITING THE RIGHT TO CLAIM, DURING THE PERIOD THE CASE COMMENCED BY FILING THE PETITION IS PENDING, THE EXEMPTIONS PROVIDED BY THE APPLICABLE EXEMPTION PROVISIONS OF THIS CHAPTER, OTHER THAN SUBDIVISION (b), IN ANY CASE COMMENCED BY FILING A PETITION FOR EITHER OF THEM UNDER TITLE 11 OF THE UNITED STATES CODE, THEN THEY MAY ELECT INSTEAD TO USE THE APPLICABLE EXEMPTIONS SET FORTH IN SUBDIVISION (b).

4. RIGHT TO HAVE INDEPENDENT COUNSEL REVIEW WAIVER. Both parties *acknowledge that they have been informed of their right to consult an attorney regarding the effect of this waiver on them.*

5. MUTUAL WAIVER. Both parties, by executing this agreement below, hereby waive their right to claim any state exemptions, other than those provided in California Code of Civil Procedure §703.140(b), during the pendency of the Chapter 7 Bankruptcy Of _____, filed in the U.S. Bankruptcy Court for the Southern District of California. The foregoing is agreed to by:

Dated:

Wife

Dated:

Husband

**341(a) Meeting of Creditors
Questionnaire**

Name: _____ Case No: _____

1. Have you reviewed your Petition, Schedules and Statement of Financial Affairs and were they explained to you by counsel before you signed them?
Yes _____ No _____
2. Do you understand you are required to disclose all present and future rights to property and money to the Trustee and to not do so could result in civil, as well as criminal, penalties?
Yes _____ No _____
3. Do you understand that you are to report to the Court and Trustee by formal written Amendment any post-bankruptcy discovered right to an inheritance or life insurance that occurs within 180 days of the date your case was filed?
Yes _____ No _____
4. If married, have you disclosed all property rights and money of your spouse acquired during your marriage (regardless of the title of ownership), whether separated or living together?
Yes _____ No _____
5. Are you a beneficiary under a will, trust or insurance policy where someone has died?
Yes _____ No _____
6. Are you the beneficiary or trustee of a trust?
Yes _____ No _____
7. Have you made any payments or transferred any property on a pre-bankruptcy debt to a family member or business associate within the past one year?
Yes _____ No _____
8. Have you made any payments or transferred any property, other than regular periodic contract required payments, to any person or entity cumulatively in excess of \$5,000.00, within four years of filing bankruptcy?
Yes _____ No _____
9. Do you have any interests in any partnerships, LLP's and or LLC's?
Yes _____ No _____
10. Do you now or have you had in the past, any interests in offshore accounts, i.e., accounts outside the borders of the United States?
Yes _____ No _____
11. Are you seeking recovery in any current lawsuits, or do you have a belief you have grounds to file a lawsuit or counter suit, whether you desire to do so or not, SEEKING DAMAGES?
Yes _____ No _____
12. Are you owed any money?
Yes _____ No _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT.

Dated:

Debtor

Dated:

Co-Debtor

I have reviewed the questions and responses with my clients and, where appropriate, conducted a reasonable inquiry required of FRBP 9011.

Dated:

Attorney for Debtor(s)

**CORPORATE OR PARTNERSHIP DEBTOR QUESTIONNAIRE
AND DOCUMENT REQUIREMENTS**

**THIS FORM MUST BE COMPLETED, SIGNED AND RETURNED
TO THE TRUSTEE AT THE TIME OF YOUR EXAMINATION**

Name: _____

Briefly describe the nature of the debtor's business:

1. Have the bankruptcy schedules in this case been reviewed and explained to you by counsel?
Yes _____ No _____
2. Are the bankruptcy petition and schedules in this case complete, true and accurate?
Yes _____ No _____
3. Has the business entity made any payments to corporate officials, investors or shareholders, or partners; family members of corporate officials, investors or shareholder, or partners; on a pre-bankruptcy debt within one year of filing for bankruptcy?
Yes _____ No _____
4. Has the business entity made any payments to creditors in excess of \$5,000.00 cumulative on a pre-bankruptcy debt within three months of filing for bankruptcy?
Yes _____ No _____
5. Has the business entity transferred any money or anything of value to another entity or person within four years of filing for bankruptcy outside the ordinary course of business?
Yes _____ No _____
6. Is the business entity seeking recovery in any current lawsuits, or is there a belief grounds exists to file a lawsuit or counter suit SEEKING DAMAGES?
Yes _____ No _____
7. Does the business entity have any claims against any insurance company for any losses or damages to any personal or real property?
Yes _____ No _____
8. Were any loans made by the business entity to any individual persons or entities?
Yes _____ No _____
9. Is the business entity entitled to any tax refunds or loss carry-backs?
Yes _____ No _____
10. When was business started and when did it stop operations:
Start: _____ Stop: _____
11. Were any vehicles utilized in the business entities operations?
Yes _____ No _____
12. Does the business entity have any rights or interest in intellectual property?
Yes _____ No _____
13. Have any records of the business entity been destroyed?
Yes _____ No _____
14. Are there any known environmental and/or contamination issues or problems arising out of or relating to this business entity?
Yes _____ No _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT.

Dated: _____

Position: _____

I have reviewed the questions and responses with my clients and, where appropriate, conducted a reasonable inquiry required of FRBP 9011.

Dated: _____

Attorney for Debtor(s)